

UNITED STATES OF AMERICA
NUCLEAR REGULATORY COMMISSION

PUBLIC MEETING WITH THE NUCLEAR ENERGY
INSTITUTE TO DISCUSS ISSUES RELATED TO
VOLUNTARY INDUSTRY INITIATIVES

Nuclear Regulatory Commission
One White Flint North
Room 0-4-B-6
Rockville, Maryland
Thursday, February 17, 2000

The above-entitled meeting commenced, pursuant to
notice, at 1:00 p.m.

PARTICIPANTS:

B.W. SHERON, Associate Director, NRC/NRR/ADT
J.R. STROSNIDER, Director, NRC/NRR/DE
W.H. BATEMAN, Chief, NRC/NRR/DE/EMCB
C.E. CARPENTER, Lead Project Manager,
NRC/NRR/DE/EMCB
M.K. KHANNA, Materials Engineer, NRC/NRR/DE/EMCB
TIMIR MISRA, Engineer, NRR/DE/EMCB
NOEL DUDLEY, Senior Staff Engineer, ACRS

PARTICIPANTS:

GARY VINE, Senior Washington Representative, EPRI

ALEX MARION, Director, NEI

BOB BISHOP, General Counsel, NEI

P R O C E E D I N G S

[1:00 p.m]

MR. CARPENTER: Let's get started and take care of some of the miscellaneous stuff.

I'm Gene Carpenter. I work in NRR Division of Engineering, and I'm presently working on the voluntary industry initiatives response to the Commission.

The reason that we are here today is in response to a telephone call that Brian Sheron and Jack Strosnider had with Mr. Beedle regarding the voluntary industry initiatives. At that time he requested a meeting, and we agreed to meet today.

I would like to go around the room.

Meena.

MS. KHANNA: I'm Meena Khanna. I work in Materials and Chemical Engineering Branch. I am helping out Gene with voluntary industry initiatives.

MR. BATEMAN: I'm Bill Bateman, Chief of Materials and Chemical Engineering.

MR. STROSNIDER: Jack Strosnider, Director of Division of Engineering.

MR. SHERON: Brian Sheron, Associate Director for Project Licensing and Technical Review, or assessment, or whatever it is.

MR. MARION: Alex Marion, Director of Programs, NEI.

MR. VINE: Gary Vine, EPRI.

1 MR. CARPENTER: As you can see, we are having the
2 meeting transcribed. That will be something that we put on the
3 external Web page, which we should have up tomorrow.

4 Brian, do you have any opening comments?

5 MR. SHERON: No, other than I think the issue which
6 we expressed to Ralph was that we need to go forward with this.
7 This is DSI-13, which was a Commission directive. We are on
8 the hook to provide them with the guidelines for implementing
9 this program by April. We were concerned that we did not
10 receive any industry comments on the Federal Register Notice
11 for this subject.

12 When I talked with Ralph, he seemed to be of the
13 opinion that the industry was not jumping at this opportunity.
14 The thought was that if the NRC has a regulatory concern that
15 it should pursue it through its normal processes. I would
16 argue that's fine, except I would also point out that the
17 industry complained about that. That is one of the reasons we
18 did propose voluntary industry initiatives.

19 Just speaking openly, I'm a little frustrated. I
20 don't know what you guys want. You don't like generic letters.
21 We said fine, we will give you the opportunity to take these
22 issues on and come back to us and tell us how you think they
23 should be dealt with. If you don't want to do that, we have no
24 choice but to go back to the generic letters. We have agreed
25 to disagree on what constitutes compliance. So be it.

1 Anyway, with that opening, I think Ralph said there
2 was a meeting with the industry execs or something yesterday
3 and this issue was going to be brought up. So I'll let you
4 take it from there, Alex.

5 MR. MARION: Thank you. As always, we appreciate the
6 opportunity to have these open, candid discussions on the
7 process of understanding and carrying forward voluntary
8 initiatives within NRC's regulatory construct.

9 I do want to take a second and apologize for Ralph
10 Beedle. He is not here, obviously. He had a conflict that
11 came up later this morning and does send his apologies.

12 I do have a letter that was mailed out this morning.
13 I brought copies with me. I can hand the copies out. I don't
14 know if that creates some kind of process issue with you, but I
15 will do that.

16 This letter is in response to the point you raised,
17 Brian, about NRC publishing a request for comments in the
18 Federal Register and not receiving any comments from industry.
19 As Ralph indicated in the conference call you alluded to and as
20 I indicated in the call I had with Jack a couple week ago, we
21 were going to submit comments articulating some principles
22 relative to voluntary initiatives, what they are, what they
23 aren't, and then how they should or should not relate to the
24 NRC's regulatory process.

25 What we could do is take a few minutes and give you

1 an opportunity to read the letter. Then what I would like to
2 do is briefly walk through it and touch on some of the major
3 points, if that's okay.

4 MR. SHERON: Yes, that's fine.

5 You've got a sentence here already that says, an
6 alternative to NRC imposing new regulatory requirements by
7 issuing a generic letter. We don't impose new regulatory
8 requirements by issuing a generic letter. Ninety-nine percent
9 of all generic letters have been just 50.54(f) requests for
10 information.

11 MR. BISHOP: Before we start, if I may apologize for
12 my tardiness. My name is Bob Bishop. I'm general counsel of
13 NEI. I erred in my timing to catch the right train, and I
14 apologize.

15 MR. SHERON: My reaction based on going through it
16 this one time is I still think we are missing each other here.
17 We are talking past each other. We are not proposing voluntary
18 industry initiatives as a way to impose new regulatory
19 requirements. The issue boils down to that when we see a
20 technical concern.

21 Let's take the small bore pipe cracking in the HPI
22 line. There was a question: What does this mean from a
23 regulatory standpoint? Is there a violation of some regulation
24 or some rule or the like? Is this a generic issue? Should
25 inspection programs be enhanced, or are they already sufficient

1 and this is just an aberration?

2 The typical response that NRC would normally take
3 would be to write out a generic letter 50.54(f) that says, hey,
4 look what happened over here. They had this problem. We don't
5 have any information that says this isn't a problem everywhere.

6 Therefore, we would go through the usual words which
7 would say, therefore, we request every licensee to tell us what
8 programs they are putting in place to make sure this doesn't
9 happen at your plant, blah-blah-blah-blah-blah-blah. And
10 everyone would go, ah shit, we've got to put in more inspection
11 programs and everything and the like.

12 What we are trying to do is say we agree. That's
13 probably not the right way to address the issue. It sends a
14 message. It's not a backfit. It just says tell us what you
15 are doing. Most licensees interpret that to mean, if I tell
16 them I'm not doing anything, I'm going to be in big trouble.
17 So they say, well, I had better do something if I don't want to
18 be in trouble with the regulator.

19 In the same sense, we need to address the issue.
20 We're not really in the best position in a lot of cases to
21 address it because of plant-specific nuances and the like. So
22 the thought is we go to the industry and we say, look, you guys
23 are familiar with this event just like we are. We got an itch
24 and we're not sure how to scratch it.

25 We would like industry to take a look at this.

You

1 go off. You look across the spectrum of plants. You look at
2 the inspection programs. You do the risk assessment, whatever.

3 You come back and you tell us, we've looked at this,
4 and either we concluded this is an aberration and here's why
5 and here's why the current programs are adequate and why they
6 will catch this in the future.

7 Or maybe you come back and say, you're right. We
8 need to do something more. We've looked at this, and yes, this
9 inspection program needs to be tweaked here or there.

10 Or maybe you say this is only unique to these kind of
11 plants. These are B&W plants, and we found out that all the
12 other operating plants don't have this problem. Therefore, we
13 only have to worry about these eight or nine plants.

14 You come back and you tell us and you propose what
15 you intend to do about it. As long as it makes sense and it
16 technically addresses the issue, the thought was we'll go, hey,
17 it looks good to us.

18 That's what was intended. It was not new
19 requirements. We do not impose requirements normally through
20 the generic letter, and when they do, they go through the
21 backfitting process.

22 We've disagreed over what constitutes a compliance
23 backfit and we've had discussions out the whazzoo on that, and
24 I think we have just agreed to disagree. The fact is that
25 every generic letter that goes out of here basically is blessed

1 by the Commission. So it's not like it's a matter of the staff
2 is out of control. If you want to say that it's the agency
3 that is out of control, if that is how you want to characterize
4 it. But the fact is that they go through the public comment
5 process, they go through CRGR, and they go up to the Commission
6 before they go out. The Commission has final say. I don't
7 know where I can go with that one.

8 MR. MARION: Let me speak to that point because it
9 caught your attention in the letter, and this in the second
10 paragraph on page 2, first sentence. That is taken from your
11 regulatory issues summary letter that communicated the generic
12 communication process. Attached to that ISL were the comments
13 that we had submitted. There was a second attached, which is a
14 table or matrix that articulated dispositioning the comments.
15 One of the comments was along the lines of NRC invoking the
16 regulatory positions via a generic letter. That is the thought
17 we are trying to capture in that statement.

18 Maybe that was an error, but that is what I picked up
19 on. If that was an error, then clearly this was an error.

20 To get back to your objective in terms of the
21 expectations of voluntary initiatives, in our previous
22 interactions we have fundamentally agreed that one of the
23 things that has worked very well has been the opportunity to
24 have early and frequent interactions to discuss technical
25 issues.

1 I think we all agreed that once we established some
2 kind of an understanding of the scope and magnitude of the
3 technical issue, then oftentimes it became clear what the
4 regulatory action may be as well as a complementary or
5 supplementary action by the utilities. I think we are in
6 agreement on that.

7 I'm not sure that we are talking past each other in
8 terms of that. What we tried to address in this letter is to
9 provide some specific points that relate to the items that were
10 requested in the Commission paper to you dealing with tracking
11 and enforcing commitments as they may relate to a voluntary
12 industry initiative or as they may relate to a guideline
13 document that somebody decides to use within a regulatory
14 construct.

15 We also have our thoughts on inspection and
16 enforcement as it may relate to initiatives in the use of
17 guidelines.

18 That is what we are trying to capture in this letter.

19 In terms of the discussion yesterday with the Nuclear
20 Strategic Issues Advisory Committee Steering Group, we talked
21 about the number of interactions that have been held between
22 stakeholders and the NRC going back to the September 1998
23 meeting in Chicago, the public meeting that we had in December.

24 We also told them about today's meeting and that we
25 were building on and intending to incorporate in this letter

1 basic principles of the initiative process, basic principles
2 relative to NRC regulatory action that we had already
3 articulated with the chief nuclear officers, et cetera, and the
4 idea was to package that into this letter and submit it in
5 response to your request for public comments.

6 If you take a second and look at the attachment -- I
7 know some of you have seen this before -- this gives a
8 historical perspective of various initiatives and guidelines
9 that have been issued by NEI recently but captures more of the
10 documents that have been issued by one of the predecessor
11 organizations, NUMARC.

12 I think it clearly demonstrates that there is a
13 relationship of sorts between these guidelines and these
14 initiatives that relate to NRC expectations, whether those
15 expectations take the form of regulatory action, or to go back
16 to your purpose, whether the expectations relate to trying to
17 understand the nature of a technical issue so we can decide
18 what is the best approach to take to resolve it. I think this
19 captures the spectrum from those two perspectives as well as
20 some others.

21 I think in a way what we need to come to grips with
22 is whether or not there is something broken with the ad hoc
23 process that this represents, and ad hoc because it's not
24 formally captured and written down as a guideline to capture
25 these interactions, but the process has been very successful in

1 the past.

2 There, of course, have been instances where we have
3 agreed to disagree, but I think for the most part we have
4 agreed that something needed to be done to understand the
5 technical nature of an issue.

6 There are also examples in here where it was very
7 clear that industry decided through a formal industry position
8 to develop something that would provide some consistency across
9 the industry in implementing a particular regulation or a
10 change to a particular guidance document. What I am referring
11 to more recently is the 50.59 example, and I think that
12 provides a good example.

13 That is what we tried to capture here but by the same
14 token answer some of those regulatory action process issues
15 dealing with commitments, inspection and enforcement, and that
16 is essentially all rolled up in this letter.

17 MR. SHERON: I would argue that the ad hoc approach
18 we have been using has worked in many respects. It has got
19 some drawbacks. For example, we really don't have a formal
20 process for involving other stakeholders at this point.

21 MR. BISHOP: In addition to just seeking comments on
22 generic letters?

23 MR. SHERON: Right now, when I have a generic letter,
24 their ability to input is through the public comment period of
25 a draft generic letter.

1 MR. BISHOP: And as well in public meetings.

2 MR. SHERON: The public meetings are different. They
3 will argue and they are going to say that's fine as long as
4 they live in Washington and I don't have a nine to five job.

5 MR. BISHOP: But there are a variety of
6 opportunities, including --

7 MR. SHERON: All I am saying is that right now the
8 opportunity for the public is at least they can sit there and
9 they can read something and they know what is going on; they
10 know what the proposal is, and they can submit comments on it.
11 I'm saying right now the ad hoc process really doesn't have any
12 formal mechanism for that to occur.

13 For example, when we go to the industry and we say,
14 gee, we need an industry initiative on something, at some point
15 you may provide us with a document that says here's our plan.
16 At the time we are not sending that out for public comment or
17 anything. That's what I'm talking about.

18 One of the shortcomings is there needs to be a
19 process for meaningful stakeholder input. You may come back
20 and say here's our program to respond to your initiative, and
21 then there may be somebody out there that says this is woefully
22 inadequate and here's why. They need to have that opportunity
23 to at least be heard. So we need to know what that process is.

24 The process might be that for an industry initiative
25 that the industry accepts they will provide us with a report

1 outlining their plan to attack the issue. The process then may
2 say and the NRC will then notice that in the Federal Register
3 and solicit comments on it, and those comments will be passed
4 back, or whatever, blah-blah-blah.

5 All I am saying is we need to have a process. All we
6 are looking for is guidelines on how we do this. You don't
7 want any Tom, Dick and Harry in this agency calling you up
8 every time they read the morning report and they see some
9 reactor burping or belching the wrong way, saying, hey, I've
10 got a voluntary industry initiative for you guys. You need to
11 know there is some discipline on our side.

12 The guidelines would provide that discipline. That's
13 what the intent was. We've got close to 600 people in NRR. We
14 have a turnover rate of about 50 a year. New people come in.
15 They need to understand what the process is.

16 The whole idea is we want to lay this process out in
17 a guideline so that everybody knows how we are playing the
18 game; your utilities know how we are playing the game, the
19 public knows how we are playing the game, and we know how we
20 are playing the game.

21 That is why we are trying to come up with these
22 guidelines. A lot of these issues that we will raise to you
23 have regulatory concerns associated with them. We are
24 questioning whether or not, for example, on some of them, gee,
25 can I really assume that there is still compliance with some

1 regulation based on this new information?

2 If you propose a voluntary industry initiative that
3 resolves that issue and say, yeah, we still comply with the
4 regulations because we are going to do this, this and this,
5 fine. Then I need to be able to tell the inspectors here's
6 what you inspect.

7 MR. BISHOP: Let me interject so you can understand
8 my perspective. I'm not quarreling with anything you said,
9 Brian. As a matter of law, there are things you have to do.
10 Then there are things as a matter of policy you choose to do.

11 As a matter of law, you've got to get public comment
12 if you are going to have a rulemaking. If you are going to
13 amend a license, issue a license, you have got to have an
14 opportunity for a hearing. Those are things you have to do.
15 That's all you have to do. Everything else is those things you
16 choose to do because you believe that's the right way to carry
17 out your responsibilities under the law. So there are no real
18 constraints on either the upside or the downside on how you
19 choose to do that.

20 I think that is something we kind of need to keep in
21 mind, that all of these things are your decision on how you can
22 best satisfy your mandate. They are not required by law. They
23 are things you choose to do because you think that's the wise
24 way to make policy, or to make decisions.

25 This meeting, you need not by law have a transcript.

1 You need not have an opportunity for people to comment on the
2 transcript. You need not have videoconferencing, although you
3 can choose to do all those things. So you are not constrained,
4 I think, by the law in any way, or must you do anything else
5 other than that which you concluded is the wise use of
6 resources.

7 I think fundamentally a lot of our comments come down
8 to that: What's the best use of the agency's resources, what's
9 the best use of licensees' resources, and frankly, what's the
10 best use of the public's resources.

11 If I am an individual at a power plant in West
12 somewhere, all of these opportunities for me to participate may
13 be very helpful if it's an issue I feel particularly strongly
14 about, but I may not have the resources to be able to pop into
15 Washington for all these meetings, to go to my local library
16 where there is a computer or whatever else.

17 I think your responsibility is not to make sure 280
18 million people vote in favor of anything; it is to figure out
19 what's the right balance of interests here and the need to
20 solve problems. I have a hard time thinking about it in some
21 generic way simply because some things are going to have a very
22 sensitive time factor to them. Some of them are going to
23 clearly have safety implications. Many of them might have
24 safety implications, but the best guess going in is probably
25 not, but we need some assurance that they don't. All of those,

1 I think, one would do it differently.

2 I'm hard pressed to think that it's a wise use of
3 resources to say in every case, no matter what, this is the
4 process we are going to follow through with, and that's that.
5 That requires resources, that takes time, and that takes a lot
6 of labor that you may not be able to justify based on the
7 nature of that particular issue.

8 The ad hoc may not be neat, but it seems to be
9 working.

10 MR. MARION: We made the point before, and I think we
11 went through a couple examples to support what Bob just said,
12 that each one of these is unique and different unto itself.

13 Quite frankly, if there was a way to develop a
14 structured process by which the industry through NEI would deal
15 with initiatives and decision making associated with them and
16 decision making associated with particular guidance documents
17 on issues, we would have a structured process that everybody
18 would use. But it doesn't work.

19 I've thought about it for a long time, but it is
20 difficult to establish because the issues are different; the
21 impact of the issues are different; the regulatory aspect of
22 issues are different and unique; and the implementation efforts
23 are different and unique in terms of addressing the problem,
24 whether it's done solely by industry, solely by NRC, or in a
25 complementary fashion by industry and NRC.

1 That's why I asked you to give some thought to that
2 attachment that identifies the historical perspective, because
3 I think that, quite frankly, demonstrates the point. If you
4 look at those topics and those guidelines that were developed,
5 each one of them is different.

6 MR. SHERON: I understand. At one point we basically
7 almost offered you the opportunity to propose some guidelines.
8 If you remember, as part of our implementing GPRA in this PBPM
9 process, one of the things we have done is defined major
10 outcomes, one of which is improved public confidence.

11 We are not trying to get people to love nuclear
12 power. What that means is that we want the public to be able
13 to understand the way this agency operates and how our
14 decisions are made. In other words, we want to operate in a
15 transparent way. You can't really operate in a transparent way
16 if we continue on an ad hoc basis.

17 MR. BISHOP: Why not?

18 MR. SHERON: Because people don't sit down and say,
19 gee, I feel comfortable because I know that NRC is dealing with
20 that problem in some way, shape or form with the industry.

21 As opposed to saying, I understand what their process
22 is in how they deal with these issues. I don't care what the
23 specific issue is, but I understand what their process is and
24 how they deal with it, and I know it will be dealt with in an
25 open and fair manner, because it will get public comment, it

1 will get this, it will do that.

2 As opposed to, gee, there they go again; they are off
3 meeting; they are off figuring out how the hell they are going
4 to get this one off the books, and the like.

5 I'm just telling you what the perception is.

6 MR. BISHOP: I don't mean to challenge you, but I'm
7 not sure that is the public's perception. I think a lot
8 depends on how you want to try to characterize the public. Two
9 hundred eighty million people, they're not concerned or
10 interested, the great majority of them.

11 MR. SHERON: I agree.

12 MR. BISHOP: To the extent they know, they're okay.

13 MR. SHERON: I agree. We deal with a very small
14 public: Union of Concerned Scientists, NIRS, Friends of the
15 Earth, Common Cause.

16 MR. BISHOP: That's why you go through things like
17 noticing this meeting, having the opportunity for those who are
18 interested and can participate to attend or not, to send you
19 their comments. I've never tried to do this as a private
20 citizen, but my expectation is if I was out in Missouri and I
21 couldn't come to this meeting but I was interested in this
22 topic and I sent you a letter, or sent Mr. Carpenter a letter,
23 sent Mr. Bateman letter, it would be read; it would be
24 considered in the deliberations of the agency.

25 MR. SHERON: But the person needs to know what is the

1 process. In other words, do I have a concern? Suppose we
2 said, yes, we accept whatever NEI came in and proposed on some
3 issue.

4 MR. BISHOP: Somebody who doesn't understand the
5 process might conclude that, but I'm not sure that's the
6 minority that is worth spending a whole lot of resources to
7 satisfy, because I'm not sure you'll ever know if they are
8 satisfied. I'm not sure how you could ever measure that.

9 My sense is you have to do what you think is the wise
10 use of your resources, and the wise use of your resources
11 implicates the wise use of our resources, to ensure that issues
12 are fairly and openly ventilated, that people have an
13 opportunity to participate to the extent they are interested,
14 that they choose to involve themselves in it, and then go on.

15 MR. SHERON: If you go back and you look at the
16 revised generic communication process that was put forward to
17 the Commission, all we have really done on this is put in place
18 a pecking order. It's no different than what the pecking order
19 was before except we started a little bit further down the
20 line.

21 Down the line the pecking order was generic letter,
22 maybe bulletin, and if somebody didn't come back with the
23 answer we liked and we thought there was a safety problem, we
24 could go to an order. All we have done is added into that
25 pecking order this thing called voluntary industry initiatives.

1 What that does is say, before I go off half-cocked
2 with a generic letter that says in order to demonstrate
3 compliance with yadda-yadda, please give me 50,000 pieces of
4 information, or whatever, we are giving them an opportunity by
5 saying, would you like to come in and talk about this, and
6 would the industry like to take a look at this and come forward
7 with a program to address it and either put it to bed or not?
8 And that's fine. All we want to do is have a more defined
9 process for how we will do that.

10 MR. BISHOP: But under current process, if that
11 occurs, you make summary minutes available. If somebody cares
12 enough to understand what Nuclear Regulatory Commission's
13 stands for, they can find that very readily if they are
14 interested in that issue.

15 I guess I'm still not sure why documentation under
16 the current process isn't the right way to demonstrate what the
17 process is.

18 MR. STROSNIDER: Looking at your summary paragraph,
19 it says, In conclusion, we believe voluntary industry
20 initiatives should not be a substitute for regulatory action.

21 We met with the industry; we identified an issue.
22 Industry came back and said, here's what we are going to do to
23 address it.

24 Would this sentence suggest that we should still put
25 out a generic letter?

1 MR. BISHOP: No.

2 MR. STROSNIDER: That's the way I read it. I can
3 give you examples.

4 The steam generator framework that we have been
5 working quite successfully for the last couple of years. We
6 had a generic letter that had been through the process and
7 ready to go out the door to say, industry, tell us how you are
8 going to address this. We put it on hold in order to follow
9 this voluntary initiative. It's in substitute of that
10 regulatory action which would have been a generic letter.

11 When I read this, what it tells me is we could go off
12 and we could work the voluntary initiative, but we should have
13 still put the letter out. We had the same thing on the small
14 bore pipes.

15 MR. MARION: There is a little more background.

16 MR. STROSNIDER: That's where I don't understand what
17 you are trying to tell us.

18 MR. MARION: That is a statement of NRC terms.
19 "Substitute for regulatory action" is your terminology. We
20 talked about this at the December meeting.

21 MR. STROSNIDER: Right, that a generic letter is a
22 regulatory action.

23 MR. MARION: We talked about that language, and they
24 are offering some comments to kind of bring to your attention
25 the sensitivity with that terminology.

1 Steam generators is an excellent example. We all
2 know, the three of us, because we have been involved. It goes
3 back to advanced notice of proposed rulemaking to deal with the
4 technical issues and how they play out in the licensing basis
5 of plants.

6 We all agreed up front that there was a need for us
7 to work together. The industry was willing to do that because
8 of the operational impact of not paying sufficient attention to
9 effective management of steam generator degradation. That is
10 fundamentally what it's all about, and we discuss that concept
11 in the letter as well.

12 We agreed that we were going to work together and
13 proceed down the path to address resolutions. I think that is
14 what we have done.

15 What happened in that generic letter, if my memory
16 serves me right, a number of challenges came up as part of that
17 process, but one of them was when a new degradation mechanism
18 was identified, what is the NRC going to do? We worked out an
19 understanding that, well, maybe it would make some sense for
20 NRC to issue a generic letter on the voltage base criteria, et
21 cetera, and industry would do some activity. The discussions
22 and interactions consistent with what we were talking about
23 earlier on coming to grips with the technical nature of the
24 problem and understanding what the regulatory and industry base
25 roles could be, I think, played out in the steam generator

1 arena.

2 MR. STROSNIDER: It did. I come back to "voluntary
3 industry initiatives should not be a substitute for regulatory
4 action." We have steam generators, we have small bore piping,
5 we have BWR VIP where we used voluntary initiatives in lieu of
6 putting out generic letters, taking that regulatory action that
7 was successful. When I read this, I think we could have gone
8 and done everything we did, but we should have still put out
9 the generic letter. That's the way I read this.

10 MR. BISHOP: If the purpose of the generic letter was
11 to find out if this is a problem or not. The generic letter
12 goes out to each licensee, and basically -- I don't remember
13 whether you said 95 or 99 percent of them are associated with
14 trying to find out if this is a real problem or not. It seems
15 to me in that context -- I'll take your numbers, Brian -- it
16 seems to be the great bulk of them.

17 If individual licensees come back and say, no, it's
18 not a problem, or the industry does an evaluation and comes
19 back and says it's not a problem, there is no value to be
20 gained with sending a generic letter out that says tell us what
21 you just told us.

22 MR. STROSNIDER: They typically say a little bit more
23 than "we want to figure out if this is a problem."

24 MR. BISHOP: What is that little more?

25 MR. STROSNIDER: The steam generator, the small bore

1 piping, those that were ready to go out the door, particularly
2 the steam generator, said we want to verify how plants are
3 complying with their licensing basis; we need information to
4 verify that.

5 We told the Commission there are deficiencies in the
6 technical specifications; we don't think that what is in there
7 is actually maintaining the licensing basis and some of the
8 regulations. Quite frankly, the tech specs have some
9 deficiencies.

10 We put it in terms of the compliance. We recognize
11 it. We were involved in establishing those tech specs too, but
12 it was an issue that needed to be addressed. The basis for
13 putting it out was provide information so we can conclude you
14 are still in compliance. It wasn't just, is this an issue or
15 not?

16 When we talk about the 90 percent of what had gone
17 out, it's typically provide us information to demonstrate you
18 are in compliance with 51.09 type language.

19 I have a little bit of a difficult time understanding
20 why that is a process that didn't work pretty well and why you
21 wouldn't want to support that as opposed to taking the action
22 to send out those GL's.

23 MR. SHERON: I still don't understand how you
24 reconcile that with what happened on the shutdown rule.

25 MR. MARION: Let's finish on the steam generators.

1 MR. STROSNIDER: One other example that has been
2 pointed to as a very successful area is the BWR VIP work. We
3 had a generic letter that went out on the core shroud when
4 cracking was first found.

5 We never went to the point of writing additional
6 generic letters ready to go out the door like we did on steam
7 generators, but as additional component degradation occurred,
8 and it is pretty clear it has happened, one option would have
9 been for the NRC to look at it and see if there a compliance
10 issue here. If so, we will send out generic letters. But we
11 didn't do that. The industry or that owners group decided to
12 be proactive and come in and say, we're going to address these
13 issues. Here's how we are going to do it.

14 We had discussions on that and said, what is the
15 compliance aspect of this, what's the enforcement aspect of
16 inspection. Everybody agreed that this ties into Appendix B.
17 The proposals that were coming to us would be an acceptable way
18 to satisfy Appendix B. Not the only way. You could do other
19 things.

20 In my mind, and I think in the people who were
21 working that, we probably avoiding going through a generic
22 letter process. We did that in lieu of taking other regulatory
23 actions, other ways we could have done it.

24 MR. MARION: But that decision making to pursue that
25 course of action or not pursue that course of action was the

1 result of the kind of open, candid discussions we were talking
2 about earlier in terms of the affected industry getting
3 together with the NRC and coming to an understanding of the
4 technical issues. Then the decisions are made relative to
5 what's the industry going to do or not do, or what's the NRC
6 going to do or not do, and why.

7 I think your examples represent that process right
8 now.

9 MR. STROSNIDER: But there was a point there where we
10 could have said, okay, we understand the issue, yes, we agree
11 there is an issue, we've better defined it, now we will put out
12 our generic letter.

13 MR. MARION: That's your decision.

14 MR. STROSNIDER: When I read this sentence, it sounds
15 to me like we should have put out some generic letters.

16 MR. BISHOP: If you need something that you are not
17 satisfied that you have enough information or enough
18 understanding from an individual licensee or the industry
19 trying to sort out a potentially generic issue for all
20 licensees, that is meant to communicate that our job is not to
21 do your job. We're not the regulator. If there is something
22 more that you need, that sentence is to communicate that what
23 you ought to do is whatever it is that you feel you need to do.

24 But we'd like to have the opportunity to be able to
25 continue to work with the staff, to try to resolve issues, and

1 focus down on what is really important and what is it that you
2 really need to do. Is it a new requirement that needs to be in
3 place? That is something only you can do. We can't do it.

4 That is what that is meant to communicate.

5 MR. STROSNIDER: There is some discussion here about
6 rulemaking, new rules, these voluntary initiatives. Obviously
7 that is not the appropriate vehicle, and I don't think any of
8 these situations say that typically it's compliance issues we
9 are dealing with.

10 MR. MARION: To go back to the importance of initial
11 dialogue is to make sure there is an understanding of what the
12 compliance issue is. You need to have that understanding so
13 you can determine what kind of follow-up or subsequent action
14 is necessary to bring information to bear so that a decision
15 can be made by the NRC on what other action is necessary.

16 MR. SHERON: I would agree that if we have
17 information that to us is pretty clear that, for example, there
18 is a compliance issue that needs to be address, then, yes, we
19 are not going to fool around with a voluntary industry
20 initiative, and we will just issue whatever we have to issue.
21 For example, if something happens, whatever we discover, that
22 someone is no longer in compliance, we are not going to wait
23 around. We're not go to even say, gee, tell us what to do.

24 MR. BISHOP: We wouldn't be involved anyway if it's
25 not generic.

1 MR. SHERON: I'm talking even if it's generic. If we
2 come across and we decide something is truly out of compliance
3 and action needs to be taken, it's not going to be a matter of,
4 gee, what should we do; it's going to be a matter of we know
5 what has to be done. You'll get the letter that says you need
6 to come back in compliance and you've got to tell us how you
7 are going to do it.

8 MR. BISHOP: I think your process works well, and
9 there have been examples where it hasn't worked until we have
10 kind of come to this current process where even then the
11 interaction is helpful so it's clear to the industry, to
12 individual licensees in particular, exactly what it is that you
13 have in mind, and that open and candid dialogue before the
14 generic letter is issued is very valuable.

15 MR. SHERON: We can certainly do that. We can have
16 meetings on it when it goes out for public comment, before it's
17 issued. That's fine. If you feel you need a meeting to come
18 in and talk with us, I think we can do that.

19 MR. MARION: Going back to this ad hoc process, I
20 think there has been over the past year or so maybe less than a
21 handful of regulatory actions undertaken by the NRC in which
22 the NRC has not taken advantage of either one of the senior
23 management interactions or some interaction to say, hey, I know
24 a number of times each of you have said to me we've just come
25 across a problem on some widget at a plant; we want to set up a

1 meeting with NEI. I'll say fine. I'll get in touch with
2 whoever at NEI is responsible for that widget and follow it up
3 with you staff.

4 That has to continue. That is extremely important.
5 If that results in a regulatory action on the part of the NRC
6 based upon NRC making the determination that they have the
7 basis in the information, so be it, but I don't want to
8 preclude the opportunity for industry and the NRC to talk early
9 and often about these issues as they arise.

10 The industry needs to understand what the issue is
11 and what the impact is hopefully before they receive an
12 official communication from the NRC that says do this in 90
13 days. That's a benefit to everybody.

14 MR. SHERON: When we agree that the industry will
15 take this on, to go off and explore the issue and figure out
16 what the risk is and figure out what all the plants are doing
17 and the like, that is where we need some sort of a guidance
18 document so that everybody knows what the expectations are.
19 For example, we had some difficulty on the small bore pipe
20 issue. It took about five months before you guys even put in
21 place a program.

22 MR. MARION: Unfortunately, I don't know the details
23 of that.

24 MR. SHERON: Dave does.

25 MR. MARION: Dave is out of town on business.

1 MR. SHERON: The point is that was frustrating for
2 us. I think I want to have guidelines that kind of point and
3 say if we're going to do this, if we're going to hold off going
4 forward with, say, a generic letter or something, and we want
5 to put this on the industry's plate, something that they can
6 come back to us on and do an evaluation, we need to understand
7 up front time lines. We can't sit around for six months or a
8 year trying to fend off somebody from the public saying, what
9 the hell are you doing about this issue?

10 Well, gee, we gave it to NEI, but they haven't gotten
11 back to us yet.

12 When are they getting back to you?

13 Well, we don't know. They didn't give us a schedule.

14 That doesn't sell. You're going to get the letter
15 then no matter what.

16 Again, every time when you think this through, it
17 comes back to, gee, if we had some guidelines and guidance
18 documents so that everybody knew what the expectations were on
19 both sides and we all played to that same set of rules, then
20 when somebody says, well, what are doing about that issue,
21 Sheron, I can say, hey, here's the process. We gave it to NEI.
22 They are going to come back to us in so many days. They are
23 going to give us their program plan.

24 We will look at it. If it's acceptable, fine. We
25 are going to let them go and we'll have a justification for why

1 plants can keep chugging along while they work on it.

2 If it doesn't sell, the process says there is a
3 generic letter that is going to come out, whatever.

4 All I am saying is I feel like I'm covered in the
5 sense that I can explain to anybody what the process is that we
6 are working in, as opposed to, gee, I don't know when they are
7 going to come back. I called Dave the other day and he's out
8 of town and he doesn't call me back, and when I called him, he
9 said, I've got to meet with my utilities, and I don't know if
10 they are going to meet on that day.

11 That's the way it went on that one for five months.
12 I was getting impatient to the point I was telling Dave, I
13 said, if you guys don't give me an answer, we're going to issue
14 the letter, because I can't wait this long.

15 MR. MARION: I think, on Dave's behalf, we need to
16 move on to another topic because he's not here to defend
17 himself.

18 MR. SHERON: I'm just trying to give you some
19 examples.

20 MR. MARION: I understand. I don't know the details.
21 I'm sorry.

22 MR. SHERON: I think your words here are conveying a
23 wrong message. When you say voluntary industry initiatives
24 should not be a substitute for regulatory action, I keep going
25 back to, you know, how the hell do I explain the shutdown rule?

1 You guys are running up there telling the Commissioners, hey,
2 we've got all these voluntary initiatives; look at all this
3 voluntary stuff we are doing in the plants; you don't need a
4 rule.

5 The Commission came back and they said, don't issue a
6 rule, staff, but go out there and monitor those guys and make
7 sure they are doing what the hell they told you they are doing.

8 MR. MARION: If industry has done something -- Before
9 I get into that, I would like to make a request right now. I'd
10 like to just move away from voluntary industry initiatives. I
11 think I touched on that at our December meeting, because we
12 have already converted to an acronym of Roman numeral VII. I
13 would suggest we put our minds together and come up with some
14 other term to capture that concept.

15 MR. SHERON: Unfortunately, that is DSI-13.

16 MR. MARION: I understand.

17 If the industry has done something or decides to do
18 something that results in some kind of an enhancement that
19 plays out in an area of interest to the NRC, and then the NRC
20 decides, you know, we really ought to take regulatory action in
21 this particular area, and then they realize the industry has
22 already put forth a number of improvements, so somebody has got
23 to look at what the industry has done and whether that helps
24 you understand the need and basis --

25 MR. SHERON: Barrel baffle bolting.

1 MR. MARION: Let's finish shutdown risk for a second.

2 MR. SHERON: All right.

3 MR. MARION: Helps you understand what improvements
4 have been done to address problems that occurred in the past,
5 and if those improvements meet the intended objectives of the
6 proposed regulatory action, it seems to me the decision ought
7 to be the regulatory action isn't warranted because the
8 improvements have already been put in place and the
9 improvements have taken hold.

10 I'm just offering that as a scenario in which the
11 shutdown risk activity played out.

12 MR. SHERON: Still it's the "trust me." When you say
13 the improvements have taken hold, there are licensees out there
14 that may be implementing them. We've also seen licensees to
15 drop stuff off their plate because they go, boy, I've got some
16 cost problems here and that is costing me a lot of money; I
17 just won't do that.

18 MR. BISHOP: That's why you are issued a hammer.

19 MR. SHERON: Right, and that's why the Commission
20 said, yes, we are not going to issue this shutdown rule. We
21 are going to let the industry take credit for those
22 initiatives. But it's like W.C. Fields says, trust everybody
23 but cut the deck. Go out and look. Make sure they are doing
24 it. They told us they are doing it. You find a way to go out
25 and monitor these people, and if they aren't doing it, you get

1 back in here and tell us.

2 MR. MARION: Have you evaluated performance under
3 shutdown conditions? Had there been an increased number of
4 events?

5 MR. SHERON: We're working on the issue. We are
6 working on it from the standpoint of the oversight process.
7 How do we incorporate it into the oversight process.

8 MR. BISHOP: That seems fair.

9 MR. SHERON: So we are doing it, but it's basically
10 an inspectable area. Granted nobody is going to run around and
11 say -- we call it an auditable, actually, not inspectable,
12 because there is no regulation.

13 MR. MARION: That's right.

14 MR. SHERON: If we got out and we find out through
15 the audits that the industry said one thing and then we got out
16 and look at the plants and we find out they ain't doing what
17 the industry said, then we expect the inspectors to come back
18 and tell us, and we'll go to the Commission.

19 MR. BISHOP: Wait a minute. I learned a new term.

20 MR. SHERON: What's that?

21 MR. BISHOP: I did not understand that there was a
22 correlation between inspection requirement and audit and other
23 things. Is that true?

24 MR. SHERON: It's part of the oversight process.

25 MR. BISHOP: I understand, but what you said all of a

1 sudden -- inspectors only inspect to requirements? They audit
2 other things?

3 MR. SHERON: They enforce.

4 MR. BISHOP: I understand enforcing requirements. It
5 seemed to me what you were saying is the inspection --

6 MR. SHERON: We're looking to find a way to get into
7 the inspection program, a way that the inspectors when they are
8 out there to audit these voluntary initiatives that the
9 industry keeps coming in and telling us they are doing and
10 therefore you don't need to go forward with some regulatory
11 action.

12 MR. BISHOP: Right.

13 MR. SHERON: So we ask the inspectors. The industry
14 told us they are doing this. We gave them credit for it. We
15 didn't promulgate that regulation, because they said trust me,
16 I'm doing good. Please go out and verify they are doing good,
17 and if you find out they ain't doing good, you come back and
18 you tell us. We'll go up to the Commission and say, guess who
19 lied to you? That's all.

20 MR. MARION: Brian, you are using terminology that is
21 creating some difficulties.

22 MR. SHERON: I'm just trying to point out that that
23 is what we are doing for voluntary initiatives.

24 MR. MARION: On that particular area of interest, I
25 submit NRC should focus on industry performance in terms of

1 challenges that occur while the plant is in a shutdown
2 condition, and that should speak for itself. If an event
3 occurs while a plant is in a shutdown condition, you folks have
4 to do what you have to do if public health and safety is
5 jeopardized.

6 MR. SHERON: You are telling me if an event occurs,
7 then I do what I have to do.

8 MR. MARION: What is it that you are going to audit
9 to.

10 MR. SHERON: It's like saying I'll inspect the
11 airplane after it crashes.

12 MR. MARION: No, no. What is it you are going to
13 audit to. You talked about audits.

14 MR. SHERON: Whatever the voluntary initiatives were.
15 Whatever the industry said. Hey, you don't have to issue this
16 shutdown rule because we're doing all these good things. So
17 what we audit to is all those good things.

18 MR. STROSNIDER: The point Brian is making is you
19 can't really inspect against those guidelines documents because
20 they are not enforceable because there was no regulation
21 promulgated.

22 MR. MARION: But they weren't written to be an
23 inspection tool.

24 MR. STROSNIDER: You can go look at them and see if
25 they are being done, but you couldn't write a violation against

1 them.

2 MR. BISHOP: I never heard the verb inspect is
3 limited to requirements. You are both using that term in a way
4 I had never thought of it before.

5 MR. STROSNIDER: If you take it to the next step of
6 inspect and enforce.

7 MR. BISHOP: I understand enforce. Inspect is what
8 resident inspectors do.

9 MR. STROSNIDER: There are a lot of changes going on
10 in the inspection program trying to become more
11 performance-based, but there has always been an inspection and
12 intent to try to control things to inspect against that which
13 is enforceable.

14 Now if you bring voluntary initiatives like the
15 shutdown guidelines into play and you say, we're not going to
16 promulgate a rule, there is not going to be anything to enforce
17 against, then I think we are just trying to use different
18 nomenclature to say, well, we're not inspecting for enforcement
19 purpose because there is nothing there to enforce against.

20 The same inspector? Can you tell the difference? I
21 don't know, except they are out looking now to see if the
22 voluntary initiatives --

23 MR. BISHOP: I never understood the difference
24 between inspect and audit, and this is very helpful to me.

25 MR. STROSNIDER: We've used the word audit where we

1 got out on vendor inspections and where we don't write
2 violations.

3 MR. SHERON: There are two things you do with
4 inspection. One is you inspect to make sure you have
5 procedures which implement your regulations, and you inspect to
6 make sure you are following your procedures.

7 MR. MARION: Help me understand something. I'm
8 troubled about this discussion on shutdown. The guidance was
9 issued in '91. I don't remember the exact time frame of the
10 Commission deliberations on rulemaking, but I would suspect
11 within a couple years after. That has been years ago. Why are
12 we struggling with this today? What's happened?

13 MR. SHERON: It was just your term where you said
14 voluntary initiatives are not a substitute for regulatory
15 action.

16 MR. MARION: Don't take it out of context. That's
17 your term, but please read the rest of the paragraph.

18 MR. STROSNIDER: Let me ask as simple a question as I
19 can ask to try to distill this to the essence. Do you think
20 NRC should be developing guidelines for voluntary initiatives?
21 Should we develop guidelines or shouldn't we?

22 MR. VINE: Can I make a couple comments here?

23 MR. STROSNIDER: Wait a minute. Should we be going
24 forward with that or shouldn't we?

25 MR. MARION: I would say no, primarily because we

1 don't see the value in putting forward a formalized, structured
2 process on something that has historically worked very well.

3 Of course, there are particular examples that have
4 come up. The small bore piping was kind of difficult, and this
5 shutdown thing, but look at the spectrum of things we have
6 interacted with over the years. I think that indicates a high
7 level of success, but the reason it is does is because early on
8 we had open discussion on the technical issue, come to an
9 understanding with that. I submit when you get that
10 understanding, then it becomes clear what the roles and
11 responsibilities are. That has always been the case.

12 There are going to be instances where we agree to
13 disagree. That is going to happen, but I think most of the
14 time we understood the technical nature of the issue and then
15 determined the appropriate course of action.

16 I know there have been discussions that I've been
17 involved with where I encouraged the NRC to take regulatory
18 action because it involved safety-related components. We've
19 said that we will deal with the non-safety-related components.
20 Understandings like that, and then you move forward.

21 All those discussions and understandings were made in
22 a public forum, a public meeting such as this, documented in a
23 summary of the meeting or a subsequent letter to the NRC,
24 saying industry understands this is the problem, this is what
25 we are going to do to complement your action in whatever form

1 it takes, whether it's a bulletin, generic letter or
2 rulemaking. That has worked.

3 That's the basis of my answer to your question.

4 MR. SHERON: There have also been a number of them
5 that haven't worked.

6 MR. MARION: There have been exceptions, without
7 question.

8 MR. SHERON: What I am saying is we need to have
9 guidelines or procedures so at least you know where we are
10 coming from and what rules we are going to play by. If you
11 guys want to be involved, that's fine, but I look at these as a
12 set of rules the NRC is going to play by on voluntary industry
13 initiatives. There is going to be stuff in there like the
14 industry needs to respond by a certain amount of time.

15 MR. MARION: That makes no sense.

16 MR. SHERON: Why?

17 MR. MARION: Because you are basically intimidating
18 the industry to do something, Brian.

19 MR. BISHOP: You're suggesting up front you're going
20 to know each and every time that 30 days is the right number,
21 or 60 days is the right number?

22 MR. SHERON: No.

23 MR. MARION: Not to tell you what to do, but I would
24 suggest a management directive or an office letter, or whatever
25 is the appropriate mechanism, and I don't pretend to have a

1 full understanding of your internal procedures, but something
2 that says technical issues of a generic nature, if information
3 is needed from the industry to understand the nature, scope and
4 impact, et cetera, then obtain the information from the
5 industry.

6 You have got two ways to do that. One is call
7 202-739-8000 and ask for the right person at NEI, which has
8 been very successful in the past. The other is pursue
9 regulatory action, if that's what you want. It's your choice.

10 We're here to say interaction with the industry has
11 always worked out in a positive way for both the NRC and the
12 industry as long as we do that in an open public forum, and we
13 are willing to do that and work with you on that.

14 MR. SHERON: What I am saying is if we call
15 202-739-8000 and somebody picks up the phone says, oh yeah,
16 we'll get on this, and then we wait five or six months and we
17 don't get what we are looking for.

18 MR. BISHOP: Then you ought to increase the heat.

19 MR. MARION: You know how to do that.

20 MR. SHERON: I've tried that in the past, and
21 sometimes it doesn't work.

22 MR. BISHOP: Everybody has got a boss.

23 MR. SHERON: All I am saying is that rather than just
24 get into that mode if somebody doesn't respond, I call their
25 boss and start jumping up and down, we should have a procedure

1 that everyone understands.

2 If we are going to call you and say, do you want to
3 get this information for us, do you want to do the study, do
4 you want to figure out whether we have got a problem or not, we
5 would need some sort of a commitment that says, yes, we will do
6 it and we'll get it done by such and such a time frame. Then
7 we can either say that's acceptable or no, we are going to need
8 it earlier, or the like.

9 Everybody needs to know up front what the schedule
10 is, how we are playing the game.

11 MR. MARION: We don't disagree with that at all. We
12 talked about this in December. Those are the kind of elements
13 or things of the discussion we had early on that we need to
14 reach an understanding on.

15 MR. SHERON: This is what I'm saying. I'm not trying
16 to say we are going to put up procedures to say that we will
17 call the industry and if we don't get a call back in two weeks
18 and 14 hours and 17 minutes, we are going to issue a generic
19 letter. It's a matter of we will call the industry. The
20 industry will propose, maybe within a week, a schedule or
21 something.

22 MR. MARION: No. Very seldom can you reach an
23 understanding of one of these technical issues without having a
24 meeting.

25 MR. SHERON: No, no. We'll have a meeting. In other

1 words, we call you. We have a meeting. We explain what is
2 going on and we reach an agreement on when you will give us
3 your plan of action and how long it will take, assuming you
4 decide you will take it.

5 MR. BISHOP: What's different than just documenting
6 that in the meeting minutes, the summary? It happens now
7 anyway.

8 MR. SHERON: Because everyone will know how we how we
9 are playing the game. That's why.

10 MR. BISHOP: Wouldn't that be in the summary?
11 Anybody else in the outside world that cares about that issue
12 knows to look under that issue, and that's what they will find.
13 Anybody on the staff, anybody in the public, anybody in the
14 industry.

15 MR. CARPENTER: Can I interject here? I'm still not
16 understanding why you are objecting so much to us having a
17 formalized procedure. What is the problem with us having
18 something that we can point to to Congress, to Joe Citizen, to
19 NEI, to any licensee: Yes, if you want to do something, this
20 is how we are going to do it. By the way, this is a fairly
21 loose forum of how we are going to do it; it's not extremely
22 structured, but this ensures that we are going to follow the
23 rules that, oh, by the way, you, the industry, agreed to
24 already.

25 MR. SHERON: Process, process.

1 MR. BISHOP: I'd like to reserve judgment until I see
2 it. My fear is the more formal it becomes, the more rigid it
3 becomes, the less workable, the more resource intensive it
4 becomes without benefit. The more informal it is, the more
5 flexible it is, the more it looks like what we are doing now.
6 So why formalize it?

7 MR. CARPENTER: This is why we have asked the
8 industry, why we've asked NEI, why we've asked the public to
9 help us develop this process. You are reserving judgment.
10 Come in and tell us what you think we should do.

11 MR. BISHOP: I'd be happy to write that up. It will
12 take one page. It will describe what we think are the
13 fundamental principles that should be in play.

14 MR. SHERON: Why wasn't that done during the public
15 comment period? That's the problem. We're a month after the
16 public comment period.

17 MR. VINE: Can I make some comments here? I would
18 like to comment first on the process issue and second on this
19 business of substitute for regulatory action.

20 I really think there is a lot of common ground on
21 this question of a process. Here are the givens.

22 There clearly have been a number of successes where
23 the informal process has worked very well.

24 There are also a lot of examples where it has not
25 worked very well. I don't think many of them fall within the

1 venue of NEI, but there have been a number of cases where
2 voluntary industry initiatives that have grown out of an EPRI
3 document or an owners group activity have not gone well.

4 So there are good and bad examples.

5 The second thing we will all agree on is that whether
6 they were the good ones or the bad ones, no two have ever been
7 done alike. They all have different time lines; they all have
8 different levels of safety significance; they all have
9 different levels of the degree to which either the NRC or the
10 industry or both have already dealt with them versus whether
11 they are brand new on the table and we've got to look at them
12 from scratch; some of them require research before you can come
13 up with a solution; others it's straightforward. Every one has
14 its own characteristics.

15 The other givens are that the industry will continue
16 to do voluntary activities. It will continue to face
17 challenges and continue to go off and do its own thing and keep
18 you informed when it's appropriate to keep you informed. That
19 is going to go on no matter what you do, whether you write a
20 procedure or don't write a procedure.

21 The other thing that is a given is that you have got
22 to have some kind of response back to the Commission in May, or
23 whatever, on what you are going to do.

24 MR. SHERON: I haven't heard anything yet I disagree
25 with.

1 MR. VINE: Between all that, and this is maybe a
2 little different than Alex's answer, but I think that -- and
3 there have also been a number of cases where there have been
4 what I would consider to be abuses of the process that more
5 discipline in this thing would greatly improve not only the
6 process, but the likelihood that the commitments that industry
7 makes are the things that are risk significant.

8 So there is a value in doing something here, but has
9 to be very high level, and it has to be very flexible, and it
10 has to be just capturing the fundamental principles of what we
11 are going to do and what we are not going to do and to get the
12 outliers of where it hasn't gone well back in bounds.

13 To get into time lines, every time line is going to
14 be different. You could say that we are going to agree on a
15 time line. That's fine. But every one has to be handled
16 somewhat differently.

17 There are some fundamental things that I think you
18 can agree on that we are not going to do, or things we are
19 going to try to do that will, I think, answer Gene's question
20 and not hurt where we are. Something that is very rigid is not
21 going to work. Something that is extremely formal is not going
22 to work.

23 Let me make a comment on the substitute business.
24 First of all, I would take the shutdown rule off the table as
25 an example of anything, because that predates DSI-13. We are

1 talking modern history here now, not ancient history on how we
2 go forward.

3 You know that flowchart we used a month ago where we
4 had a box that talks about how you guys look at an issue and
5 whether the 51.09 criteria are triggered or not triggered. For
6 cases where the criteria are triggered, that is where that
7 sentence best fits.

8 If the criteria are not triggered, it's an irrelevant
9 question, because the industry will have activities for all
10 those issues for which the criteria are not triggered, and
11 there is no need for regulatory action because they are not
12 triggered.

13 So it's a pure matter of voluntary industry
14 activities that you will be kept informed on, but there is no
15 need for regulatory action, so therefore there is no question
16 of substitution.

17 On those cases where the criteria are triggered,
18 that's the case where what the letter says is that there should
19 not be an industry commitment to a new requirement without the
20 NRC establishing the basis for that commitment. In other
21 words, there has to be a one-to-one correspondence between what
22 you inspect and enforce to and what the regulation says.
23 That's the point of the letter.

24 MR. STROSNIDER: That's the only point that I would
25 respond to, which is when we talk about -- take a generic

1 letter as an example, because that's the main thing we had in
2 mind, frankly. That's what it's going to be in most cases. We
3 can't by our own process put out a generic letter unless we tie
4 it to 51.09 to triggering one of these processes we were
5 talking about.

6 MR. VINE: Unless it's just gathering information to
7 be able to make that determination.

8 MR. STROSNIDER: Yes, 50.54(f) to give us
9 information. Maybe I should say it the other way. We are not
10 going out and promulgating new requirements that way. We are
11 getting information to assess relative to existing
12 requirements.

13 The only other thing is the same thing I said
14 earlier, which is what I'm trying to understand is, if we have
15 an issue that satisfies 51.09 or 50.54 in the sense that we
16 could send out a generic letter, we've got the basis, we could
17 put it through our process, it can go out, the one thing that
18 we are suggesting is that might not be what we would do in
19 every case, depending on whether there are some industry
20 initiatives out there that satisfy the issue.

21 MR. VINE: Right.

22 MR. STROSNIDER: I was trying to clarify that
23 particular statement.

24 MR. MARION: As the author of that letter and that
25 sentence, please don't take that sentence out of the context of

1 that entire paragraph. That is the lead-in sentence.

2 MR. STROSNIDER: The rest of the paragraph kind of
3 tells me I ought to be putting out generic letters, too.
4 That's the way I read it.

5 MR. MARION: If you want to interpret it that way.

6 MR. BISHOP: If you need to establish a regulatory
7 footprint, then you can articulate what you believe the
8 regulation says and what you intend to enforce to. We can't do
9 that. Only you can do that.

10 MR. STROSNIDER: We're not trying to give up that
11 responsibility or authority. We recognize that's ours.

12 I wanted to ask one other questions on this letter.
13 I recognize this may be a difficult one for you to answer, but
14 at least you can tell me the process. You had a meeting
15 yesterday with the Nuclear Strategic Initiatives Advisory
16 Group.

17 MR. MARION: Nuclear Strategic Issues Advisory
18 Committee

19 MR. BISHOP: This is the steering group. This is 12?

20 MR. MARION: Actually about 17 or 18, I think.

21 MR. STROSNIDER: The question I wanted to ask is, to
22 what extent do we take this as representing the industry's
23 position?

24 I understand it's difficult for you to say, well,
25 everybody out there signed on to it, but I would at least like

1 to understand the process that this is going through.

2 MR. MARION: We discussed it with them. We gave them
3 background; we gave them the current status and told them what
4 our plans were.

5 MR. STROSNIDER: They represent all the power reactor
6 licensees?

7 MR. MARION: One of the advisory committees that we
8 have is the Nuclear Strategic Issues Advisory Committee, and
9 that is comprised of chief nuclear officers or an equivalent
10 position from utilities with operating nuclear power plants,
11 architect-engineering firms, and industry vendors. That is
12 currently a body of approximately, if I have my numbers
13 correct, 75, 80 or 82 individuals. They meet twice a year.

14 There is a need to have a representative sampling of
15 that group to meet on a more frequent basis. So we have a
16 steering group comprised of 17 or 18 members of the full
17 committee that meet on a more frequent basis. That's the
18 smaller group.

19 The analogy is a board of directors and an executive
20 committee, if you will. The steering group meets more
21 frequently, and their fundamental job is to give us feedback
22 and input on priorities in terms of issues, give us some
23 direction and guidance on resolution strategies, time tables.
24 Also that's a forum by which the chief nuclear officers can
25 identify issues that they think NEI should or should not be

1 pursuing.

2 MR. BISHOP: If your question is, did they review
3 this letter, did they vote on this letter, the answer is no and
4 no. That's our responsibility, or it's Ralph's and Alex's
5 responsibility.

6 MR. MARION: Since this was finalized and mailed out
7 to you folks this morning and I gave it to you today, I intend
8 to send this out for broader industry distribution and tell
9 these are the comments we submitted in response to the Federal
10 Register notice and indicate clearly that we are going to have
11 further interactions.

12 I believe in this letter we will submit to you
13 comments the 17th of March on the flowchart that was in the
14 February 9 letter to me following our last meeting.

15 MR. SHERON: You're going to submit comments when?

16 MR. MARION: By the 17th. It's in here, in the next
17 to last paragraph.

18 MR. STROSNIDER: What we have indicated we will
19 consider them to the extent we can, depending on where we are
20 in the process.

21 MR. MARION: I understand.

22 MR. STROSNIDER: We have got a deadline that is
23 scheduled, and we are working on it.

24 Let me do a little active listening exercise here. I
25 think the big picture of what I heard today is, number one,

1 suggesting that we don't really need any guidelines, that you
2 can continue with the ad hoc approach that has been used, but
3 if guidelines are going to exist, that they should be fairly
4 high level and not very prescriptive, providing flexibility
5 that reflects the spectrum of the type of issues that might
6 come up.

7 MR. BISHOP: I think that states it well.

8 MR. MARION: I think Bob made an interesting comment,
9 that this could probably be articulated on one page where you
10 pick up the elements of the current ad hoc process, schedule a
11 meeting with industry to discuss, achieve understanding of the
12 technical nature of the issues and scope, and determine course
13 of action and lay out schedules and milestones.

14 MR. BISHOP: Summary minutes.

15 MR. MARION: That's basically what comes out of the
16 discussion, but the key fundamental point, the initial starting
17 point is interaction with your technical staff and the
18 industry's technical staff in understanding the problem and
19 determining what needs to be done.

20 MR. BISHOP: And anybody else who cares. It has to
21 be a public process.

22 MR. MARION: I recognize that you took a quick glance
23 at this. After you have had an opportunity to digest this, if
24 you want to meet and talk about or if you just want to call,
25 I'd be more than happy to discuss this.

1 MR. VINE: As I alluded to earlier, there are
2 hundreds of EPRI documents and owners group documents that
3 somehow kind of get swept into this whole voluntary process
4 with the NRC. There are a lot of cases where those have not
5 been handled in the spirit of Alex's letter. I think it would
6 be useful if whatever you guys produce this spring captures
7 that situation and helps bring some discipline to that side of
8 the world as well as the interactions with NEI, because it's a
9 broader industry discipline that has to be established, not
10 just with the NEI issues.

11 I will give you an example. There are literally
12 hundreds of documents that you get from EPRI and the owners
13 group, and from NEI as well, that come in on the basis of "we
14 would like you to review and approve this as one acceptable
15 means of addressing an issue."

16 After the process of REIs and the SER and everything,
17 we end up with a letter back from you saying, yes, that is one
18 acceptable means of addressing an issue.

19 The backfit rule never even comes into play in that
20 discussion because your view is "we're not establishing a
21 requirement, we are just approving one acceptable means, and
22 therefore we don't have to meet the backfit rule" on your side.

23 The reality is that these guidelines become the basis
24 for regulatory decisions, because you then expect people to
25 meet them, and if they don't, then they can't get what they

1 need. If no alternatives are ever submitted as a means other
2 than the one that has been submitted, or if they don't get
3 approved, then that becomes in effect a regulatory requirement.

4 Many of these documents, dozens, hundreds of these
5 documents are in place today that are effectively part of the
6 regulatory requirements for decision making on your part and on
7 our part. Many of them don't even have a safety nexus.

8 So as we continue to work, EPRI and owners group with
9 NRC, in this venue of an acceptable means, we have to be able
10 to bring some discipline to that process and have the safety
11 nexus looked at on both sides before we establish something
12 that is de facto a regulatory requirement.

13 This is bigger than just the NEI issues.

14 MR. STROSNIDER: You're making it bigger.

15 MR. VINE: But these are the problems that have to be
16 dealt with.

17 MR. STROSNIDER: There are a lot of documents out
18 there developed by EPRI, some of which we receive and comment
19 on, and that's all we do is comment on them. Some of them we
20 endorse through regulatory guides. And they have different
21 degrees of enforceability.

22 MR. VINE: Some of them are enforced, and that's
23 where the problem is.

24 MR. STROSNIDER: Yes, some are enforced. It's beyond
25 the scope of what I think we were originally thinking about in

1 these guidelines. I hear what you are saying, and we will have
2 to give it some thought as to how it fits into what we are
3 talking about here.

4 MR. MARION: We touch on that a little bit in our
5 letter.

6 MR. STROSNIDER: I can look at things like water
7 chemistry guidelines. We talked about how we are going to work
8 that into the steam generator framework. You're right in that
9 we had a lot of discussions to figure out where does it fit in,
10 should it be enforceable, should it not. How do you maintain
11 flexibility to reflect state of the art in those documents, and
12 that sort of thing.

13 MR. VINE: And if they never rise to the level of
14 inspection and enforcement, then it's not an issue. If they
15 get swept into that path, then they ought not to be a bypass
16 around what you set up with NEI. We don't want a situation
17 where if you don't get the right answer from NEI on a
18 particular issue, then you go to the owners groups and get them
19 to make a commitment to something that the NSAIC says we don't
20 think this is an appropriate thing to make a commitment to. It
21 puts us into a divide and conquer mode, and that is not
22 appropriate.

23 MR. STROSNIDER: That helps me understand your
24 concern.

25 MR. VINE: If we are talking inspection and

1 enforcement, it has to be the whole industry.

2 MR. STROSNIDER: My gut reaction to that is when we
3 get involved in those what I will characterize as lower tier
4 documents, we just need to make it clear, everybody involved,
5 what stature or status we are giving it in regulatory space.

6 MR. MARION: We offer a little bit of a high level
7 construct for that in this letter.

8 Should we go through the rest of the letter?

9 MR. STROSNIDER: I think it's worth your going
10 through it to make sure we understand. Just the high points.

11 MR. MARION: I mentioned earlier that we wanted this
12 at a high level principle. We talk a little bit about the type
13 of commitments that are made to the spectrum of documents and
14 why they are made, those that relate to regulatory issues,
15 regulatory actions, orders, conditions, and other action that a
16 utility may decide to pursue.

17 The commitment management guidelines that were issued
18 by NEI speak to that entire spectrum of commitment management
19 activity. So I would encourage you to take a look at that and
20 see if that helps you in dealing with your internal process.

21 We already talked about the sensitivity in the first
22 paragraph related to imposing new requirements through generic
23 letter.

24 Again, as a segue into the third paragraph, I am
25 referring to the comments that we submitted on the generic

1 communication process. The same elements of discussion play
2 out in the voluntary initiatives, and we need to come to an
3 understanding. It really would help if the generic
4 communication process itself would be further simplified to be
5 straightforward. This is a request for action; this is a
6 request for information; and this is an advisory, or something
7 --

8 MR. SHERON: That's what you got now, right?

9 MR. MARION: No. You've still got the old baggage
10 associated with bulletins, generic letters, and it is
11 complicated by regulatory issues summary letter, and it's still
12 convoluted. Clarity and understanding is my only point. If
13 you want to discuss that sometime in the future, I will be more
14 than happy to get in detailed discussion.

15 MR. STROSNIDER: I suspect that probably is a
16 separate discussion, because frankly I think what you are
17 talking about is implementation of those regulatory vehicles as
18 opposed as to what their defined purpose is.

19 MR. MARION: It's no different than the term
20 "substitute for regulatory action." When you see those words,
21 there is an immediate perception in a register in your mind
22 that you react to. Bulletins are the same way; generic letters
23 are the same way. "Regulatory information summary letter" is a
24 mouthful. I don't think anybody has gotten an impression on
25 that yet because not enough have been issued. And I forget the

1 fourth category.

2 You need to keep that in mind in terms of these
3 communication processes, and that's the main theme of what we
4 were submitting in comments. The same issues apply in this
5 particular discussion.

6 MR. BISHOP: Simply stated, our recommendation was if
7 you want action, call it a request for action. Sometimes
8 requests for action are either in a bulletin or in a generic
9 letter. Our suggestion was maybe there is a better way, and
10 that is, what need are you really trying to satisfy?

11 If it's a request for action, call it a request for
12 action. If it's a request for information, call it a request
13 for information. Then right up front in the first line the
14 licensee knows exactly how to bin this: this is something I've
15 got to think about doing; this is something I've got to think
16 about supplying information about. Then the reaction will be,
17 hopefully, more expedited, because there is clarify in the
18 communication of what you want and the licensees better
19 understand what they need to do next.

20 MR. STROSNIDER: You brought this subject in prior
21 meetings. It is separate from the guidelines that we are
22 talking about.

23 MR. MARION: There is a relationship, and we've
24 already established it with the generic letter discussion as it
25 relates to voluntary industry initiatives. I think if we are

1 going to provide some clarity on the interactions on this
2 initiative process, we ought to have as much clarify as
3 possible in the communication mechanisms.

4 I think there is an opportunity here that we ought to
5 take advantage of. In the bottom paragraph dealing with where
6 initiatives fall with regard to inspection I offered two
7 avenues. We discussed this at our meeting in December and I am
8 just articulating it in writing.

9 I think from our meeting in December there was
10 general agreement that fundamentally there these two
11 approaches. If a guideline is developed as one way of meeting
12 an NRC regulatory requirement and that guideline is endorsed in
13 a regulatory guide as a way of implementing that regulatory
14 requirement, then NRC's inspection and enforcement authority is
15 clear.

16 The other avenue is where it's a guideline document
17 for some operational or system reliability improvement that is
18 implemented within some program that falls within the scope of
19 10 CFR Part 50. Whatever that is in terms of implementation is
20 subject to NRC inspection and follow up. The question of
21 enforcement may be a little more challenging, but it depends
22 upon the specifics of that improvement that is being
23 implemented.

24 It really comes down to the commitment process that
25 the utility has taken on that guideline or that portion of the

1 guideline and how they are going to implement it in their
2 Appendix B program, for example, or their design control
3 program. That becomes such an issue-specific thing it's hard
4 to get into more detail, but if you will reflect on the past
5 experiences with initiatives and guidelines, I think that would
6 really demonstrate how this would play out. The design basis
7 activity, I think, is a good example.

8 We already talked about the substitute for regulatory
9 action lead-in sentence to that paragraph. So I'm not going to
10 go into that again.

11 I did receive your February 9 letter with that
12 flowchart. We haven't had an opportunity to digest it. We
13 will do so and submit comments to you by the 17th. If that
14 submittal allows you to consider them as you are moving forward
15 in responding to the schedule you have for the Commission,
16 fine. If not, it's your call, but we are going to send you
17 comments by the 17th.

18 I would ask you to look at the enclosure. I think
19 the enclosure would help you understand the focus and the basis
20 for a lot of the comments that we are making.

21 I see that Gene has put up a flowchart of your
22 process. We are not prepared to discuss it in detail in terms
23 of giving you comments and input.

24 MR. STROSNIDER: This is the same one that you just
25 referenced in the letter.

1 MR. MARION: Right. But it would benefit us if you
2 would take a few minutes and just explain your rationale and
3 thinking in developing this.

4 MR. CARPENTER: You can see we have six boxes here.
5 This is an outflow of what you presented to us in the December
6 21, 1999, meeting. When we sat down and looked at what you
7 presented, we were trying to determine what it is that we are
8 trying to determine as to what is the process that a VII would
9 be implemented if the industry comes to us with one.

10 We are in basic agreement here that an issue is
11 identified. It is either identified by the NRC or it is
12 identified to the NRC by the industry.

13 Conversely, in box 2 the issue is identified either
14 by the industry or to the industry by the NRC.

15 Whichever way it goes, if the issue is identified by
16 or to the NRC, we the staff will go in and we will evaluate it
17 under 51.09 concerns and determine if a backfit does exist. We
18 will evaluate the issue and determine if it's adequate
19 protection, if it's a safety-enhancement and/or compliance
20 exception.

21 Whichever way this falls out, if we identify an
22 issue, we immediately go to the industry and we inform them of
23 it and ask to have a meeting. The industry will have a chance
24 to look at this and develop some proposed response, and then in
25 box 3 we meet on the issue.

1 This is going to be an iterative process just like
2 you were talking about earlier. We are in full agreement on
3 this. Frequent communications; open lines communication is an
4 absolute necessity in regulating and in running nuclear power
5 plants with the NRC looking on and helping out.

6 MR. VINE: Can I ask a question?

7 MR. CARPENTER: Sure.

8 MR. VINE: First of all, you basically go through a
9 full backfit analysis before we meet, or do we meet before you
10 do the backfit analysis?

11 MR. CARPENTER: It depends whether we have a chance
12 to look at it before we meet and we've had a chance to evaluate
13 it. We will go through and take a look at it under 109. We
14 may not have a very formal 109 procedure done, but we certainly
15 will consider it in the background of whether or not it is 109
16 space.

17 MR. MARION: But that doesn't preclude the example we
18 talked about earlier and in the past meetings where we may need
19 to have a meeting to discuss information that may be necessary
20 to support that kind of decision making. It's more like, okay,
21 you think it's a compliance issue, you think you need some
22 information. That would be in advance of that, right, of that
23 first block, if that were the situation in a particular issue?

24 MR. CARPENTER: If we don't have enough information,
25 this is where the iterative process comes in. It's not

1 necessarily sequential.

2 MR. MARION: It's just my reaction to processes. I
3 think they are all structured and it says you can't do this
4 until you do that.

5 MR. CARPENTER: This answers your earlier concern,
6 Alex. We don't have you follow A to B to C to D. This is, as
7 was put out in the letter, a very iterative process that will
8 get through this. Hopefully it will be timely.

9 MR. STROSNIDER: That's why there are no arrows on
10 any of the lines.

11 MR. VINE: I have one more important question on box
12 3. Unlike our earlier chart, which is already out of date, we
13 had some yeses and nos and so forth coming out of this box 1.
14 Or it was explicit as you came out of box 1 whether it met or
15 didn't meet the criteria, whether the criteria were triggered
16 or not.

17 My point is you have three lines coming out of box 1,
18 one of which goes to 3. Is that only an issue that meets the
19 criteria, or is it all issues that you look at?

20 In other words, if you get to box 3, you are ending
21 up going down and taking some regulatory action one way or
22 another. I'm assuming that the only thing that gets to box 3
23 is an issue that meets the criteria, but it doesn't say that
24 anywhere. Are you also bringing issues down to 3 that don't
25 meet the criteria?

1 MR. CARPENTER: I don't think that we explained it
2 very well if you didn't understand that. Everything that we
3 consider to be an issue to take to the industry we will want to
4 meet on.

5 MR. VINE: So box 3 includes issues that don't meet
6 the criteria in box 1.

7 MR. BISHOP: But 4 and 5 would be in A-2 because they
8 don't meet the criteria in box 1.

9 MR. CARPENTER: Right.

10 Let's go to box 4. The NRC determined the issue
11 involves adequate protection and takes regulatory action. That
12 is precisely what was said in the SRM to SECY-99-063, that if
13 this is an adequate protection issue, we will take whatever
14 appropriate action is need.

15 Conversely, if there is an action that needs to be
16 taken and the industry can help us along with that and give us
17 some information as to what they think would be the best way to
18 approach that, we will certainly take that into consideration
19 as we go forward. So don't think that box 4 just goes out into
20 a space and we never talk to the industry.

21 Again, this is very much an iterative process of
22 constant communications going on back and forth.

23 Going on to box 5, the NRC and industry agrees on a
24 voluntary industry initiative. As we said in box 3, if the
25 industry presents their proposed actions to the staff, we sit

1 down with them. We take a look at what they have presented to
2 us.

3 We go back and forth a couple of times and say, okay,
4 we agree that you should do this. A, B, C, D and F look good.
5 However, we think action E and possibly G could be fine-tuned
6 such that this will make it a little bit better and meet the
7 intent of the safety issues a little bit better.

8 Industry comes back to us. They say, yes, we agree,
9 or no, we disagree, and this is why. We will go back and forth
10 a couple of times on that and hope we come to an agreement.

11 As we say in box 5 here, those actions could be
12 somewhat far-ranging, everything from no immediate action, just
13 long-term surveillance a la what we were initially proposing in
14 Generic Letter 9701 with the top head cracking issues for PWRs,
15 with future actions as appropriate and applicable.

16 Or they could propose the VII that would be either
17 industry-wide, a specific owners group, or even just multiple
18 licensees, multiples being two or more, that would commit to
19 some specific actions and/or performance-based standards that
20 address the issue. These would be thing that they the
21 licensees, they the owners group, they the industry in toto
22 would address and would take into effect and would commit to
23 do, and we would agree and we would monitor it to ensure that
24 that was taking place.

25 Box 6 is one that I hope we never get to, that being

1 that the industry and the staff cannot agree on some actions
2 that need to be taken. If we do get to the point where we have
3 determined that this is either a safety enhancement or a
4 compliance exception and we cannot agree on something, then we
5 will naturally go forward and take whatever appropriate
6 regulatory action is necessary.

7 We are not asking you to regulate for us. We are
8 asking you to help us get to the right safety resolution in a
9 timely manner.

10 MR. BISHOP: That's our goal, too.

11 MR. CARPENTER: That is why I'm having a problem
12 understanding why you are disagreeing with -- this is about as
13 formal a process as what we are trying to put together.

14 MR. MARION: But you were going to say why we were
15 disagreeing with what? The guideline thing?

16 MR. CARPENTER: I'm sorry.

17 MR. MARION: You were saying that's why you couldn't
18 understand why we disagree.

19 MR. CARPENTER: In terms of the other guidelines.

20 MR. MARION: I think we should have made a point
21 about the guidelines. I think on box 6 you need to keep that
22 there because there are going to be situations where we are
23 going to agree to disagree.

24 MR. BISHOP: Frankly, going just to the chart for a
25 moment, I can't see a scenario where the straight line goes

1 down. We're never going to know that we can't agree unless we
2 have met and talked about it.

3 MR. MARION: The line that you have coming out of box
4 3 is probably more appropriate. The one from 1 to 6 seems like
5 a quantum leap.

6 MR. CARPENTER: I understand.

7 MR. BISHOP: I think those are the right principles.

8 MR. MARION: The one thing that we talked about in
9 December -- I'm trying to think who from the staff was at that
10 meeting. He had the same reaction to the idea of inspection
11 and enforcement. During these iterative discussions on the
12 front end of this process, if there is an expectation by the
13 NRC that the action by industry -- I'm trying to get away from
14 Roman numeral VII, so bear with me -- that the action that is
15 agreed to by industry is inspectable somehow and it's outside
16 of the regulatory construct that I identified in the letter,
17 and it may be in some instances, then it is longer voluntary.

18 MR. VINE: That was Joe Collins' comment.

19 MR. MARION: Yes. The obvious question is, well, if
20 that's the case, then it suggests this isn't something that you
21 want people to do voluntarily on their own, so why not just
22 jump to a regulatory action.

23 I think that is one of the questions that needs to
24 get thrashed out here.

25 MR. CARPENTER: For instance, a couple of years ago

1 there was a small problem with some BWRs and their jet pump
2 elbow cracking. We put together an information notice and sent
3 that out. We were also in the process of putting together a
4 generic letter requesting information and possible actions by
5 the industry.

6 Instead, some members of the BWR owners group came to
7 us and followed a process somewhat similar to this. They told
8 us what they wanted to do in lieu of regulatory action by the
9 staff.

10 We went back and forth with them a couple of times
11 over their proposals, and we agreed to those. Instead of us
12 issuing a generic letter telling the industry what they should
13 do, the industry came to us voluntarily, which is what we are
14 trying to stress here, the voluntarily nature of voluntary
15 industry initiatives.

16 They came to us to tell us what the safety
17 significance of the issue was and how they could ensure that
18 their plant would be maintained safely. We agreed to it.

19 MR. VINE: I think Alex's point is that there is a
20 Catch-22 here in the word "voluntary." If what you just
21 described takes place and it remains voluntary, then it can be
22 in lieu of regulatory action because there is not regulatory
23 action; it's all voluntary action.

24 MR. BISHOP: It satisfies a regulatory concern.

25 MR. VINE: Right. But when you start talking about

1 commitments and inspection and enforcement, it's no longer
2 voluntary. That is the tough one we have to get through.

3 MR. STROSNIDER: I don't want to speak for the
4 industry, but from the industry's perspective, I guess the
5 voluntary is, well, how voluntary is it, because if I don't do
6 it, you're going to send me some regulatory action like a
7 generic letter.

8 MR. BISHOP: If it's a generic letter, going back to
9 Brian's earlier comment, with which I agree as well, you can't
10 impose a new requirement. If it's a requirement, there are
11 other ways to do that.

12 MR. STROSNIDER: You're right. We wouldn't be
13 imposing a new requirement that way, but we might be requesting
14 action, collection of data, or something else, providing of
15 information.

16 I think the problem with the "V" in VII is how
17 voluntary is it. If you say, well, if we don't volunteer to do
18 it, you're going to send us a letter and ask us to give it some
19 attention anyway.

20 MR. BISHOP: There is a certain tension there.

21 MR. MARION: The solution lies in different
22 terminology than Roman numeral VII. I just leave that for your
23 consideration.

24 MR. STROSNIDER: It goes back to DSI-13, as Brian
25 mentioned earlier. It may not be the best choice.

1 MR. BISHOP: As long we can make sure we all
2 understand the concept, then I think the future becomes
3 brighter. I guess, Brian, my sense is if this is what you had
4 in mind in terms of describing the process you are going to use
5 other than a few minor things that we just mentioned, I think
6 that is well on the right way and the right direction.

7 MR. SHERON: I still don't see where the public gets
8 involved here.

9 MR. BISHOP: Every place.

10 MR. CARPENTER: That's working in the fine-tuning.
11 For instance, when we put up the voluntary industry initiatives
12 Web page -- I apologize in advance, Alex -- that will allow the
13 industry to be involved with this.

14 MR. SHERON: I go to box 5, NRC and industry agrees
15 on VII program; NRC monitors or inspects, as appropriate,
16 industry actions. Are they documented actions, or what?

17 MR. BISHOP: To the extent anything the NRC does is
18 documented.

19 MR. SHERON: No, no, no. After you get in through
20 box 3 and you have the meeting, and the industry says, yes,
21 we're going to buy this, we're going to take this on as an
22 initiative, are you going to submit documentation of a program
23 saying the industry commits to do the following, or the
24 industry agrees we're going to study the following?

25 MR. BISHOP: I think if you look at the attachment

1 you will see in those kinds of areas the answer is yes. They
2 ended up being a tangible piece of paper.

3 MR. STROSNIDER: But Brian is right. In looking at
4 other stakeholders' interests, we have to factor that in here.
5 In terms of keeping people informed of what we are doing,
6 allowing them the opportunity to be part of the process, we
7 have to reflect that in here.

8 It could range from things like meeting summaries and
9 notice of public meetings, up to Federal Register notices, or
10 our Web sites or press releases.

11 Those are things that we have to factor into this to
12 make sure that all the stakeholders who are involved on a
13 particular issue have information about what it going on and
14 whatever the appropriate extent is that they have the
15 opportunity to be part of the process.

16 MR. BISHOP: I would encourage you again to keep in
17 mind the general principles and having with it appropriate
18 flexibility. If it's something that requires immediate action,
19 you ought to deal with a far different way than something that
20 is not nearly as immediate in terms of interactions on every
21 measure.

22 As a matter of fact, if it's immediate action, you
23 may feel the need, and appropriate so, for much more
24 interaction with the public. Let's assume for a moment the
25 unfortunate tube leak at Indian Point 2 has some dramatic

1 significant impact. We missed something. We didn't know. I
2 would expect that there would be a lot of public involvement,
3 information, comment received just because of the nature of the
4 beast and the potential safety significance.

5 MR. MARION: I appreciate the importance of the
6 ability of NRC to allow stakeholders an opportunity to
7 understand and provide input to the NRC's decision making
8 process, because I think that fundamentally is the core. That
9 is a little bit different than stakeholders providing comment
10 and input to some action that the industry takes. There is a
11 distinction.

12 I don't know what else to say about it, but as we go
13 through future interactions on issues we need to keep that
14 clear and maintain an understanding, because that's an
15 important element.

16 MR. VINE: I hate to do this. Well, I'm going to say
17 it anyway. You got a pretty positive response from Bob on this
18 chart and I haven't had a chance to talk to Bob and Alex yet,
19 but I have some real concerns about the chart. We're not going
20 to go through them now, but suffice it to say that you can
21 envision a number of very easy ways where you could flow right
22 through this chart with an issue that has no safety nexus and
23 end up with commitments on the part of the industry without
24 ever meeting the backfit rule requirements, without ever having
25 established regulatory requirements that govern those

1 commitments and still beat this flowchart.

2 MR. SHERON: No, I disagree with that.

3 MR. VINE: I think you can

4 MR. SHERON: You have the meeting. You guys got an
5 issue. I don't know if it's in the mail or whether Sam signed
6 it or not. It's coming on Calloway with the degraded voltage.

7 MR. MARION: We've been waiting for that.

8 MR. SHERON: I don't know where it is. I concurred
9 in it somewhere.

10 MR. MARION: That's a good example.

11 MR. SHERON: We are putting that on the plate. We
12 are basically saying you come back, let's meet with you, and
13 let's discuss what's a good way to proceed with this. You need
14 to go out and take a look. What's the risk significance of
15 this?

16 Why shouldn't we, the NRC, worry about it? That's
17 really what we are asking. Why shouldn't we be worried? Why
18 shouldn't we go out with a 50.54(f) letter, saying what are you
19 guys going to do about making sure that you don't have degraded
20 voltages and you are not wheeling too much power through your
21 switchyards and you are going to monitor it, and what kind of
22 monitoring program? And on and on and on and on.

23 We will sit down and have a meeting with you. Maybe
24 you decide, okay, we'll take this on. We're going to go look
25 at it. Hopefully we will reach some agreement that you'll get

1 back to us by a certain date that says, you know, at that time
2 we'll come back and we'll tell you what we found.

3 Suppose you come back and you say, well, we looked at
4 this and this was a strange case, and we don't see this across
5 the industry at all. They just happened to be wheeling a big
6 pot of power through the switchyard that day, and that was a
7 strange day. The weather was ten below zero, and whatever.

8 MR. BISHOP: Once in a lifetime.

9 MR. SHERON: Yes.

10 Therefore, based on all the data and what we have
11 looked at from all the other plants and what is going on, we
12 don't see a problem at this time; we don't recommend anything.
13 Or maybe you just say, we will monitor it, and if we see
14 anything, we will come back to you in six months or a year, or
15 whatever. As long as you have got a good technical basis, we
16 might go, yeah, okay, that suffices.

17 If you come in and you say, yeah, you're right. We
18 went out there and we looked and we found all these guys
19 wheeling power through their switchyards, and a lot of them may
20 have had the voltage dip way the hell below where it's supposed
21 to be, and we are going to propose the following.

22 We will look at it and say, well, does that make
23 sense to us? Does that look like a reasonable way to deal with
24 this? If the answer is yes, good. That may be voluntary.

25 You could come in anywhere from we're going to change

1 our tech specs to we're going to have this voluntary thing
2 going on, and we will respond accordingly. If it's tech specs,
3 obviously it's inspectable.

4 If you say we're going to have this voluntary thing;
5 the industry is going to monitor their transmission voltages at
6 the site, or whatever, and the like, good. Maybe we will go
7 out and tell the regions you need to kind of look and make sure
8 they are doing that.

9 The whole process is that we are not going to go out
10 there and force you to do something that doesn't go through the
11 backfit rule. If you come in, if you the industry come in and
12 say, we've looked at this, and by God, to protect our
13 investments we are going to do this, or we've looked at this,
14 and we are not in compliance, and we are going to do this,
15 that's not a backfit that's missed it. You've made the
16 decision yourself.

17 However, if you come back and you say, we're not
18 going to do anything and we look and we say, gee, you didn't
19 provide any information or any data or anything, then we go
20 through our process.

21 If we don't like what you come back with, we go
22 through the process, which says we are going to go out with a
23 50.54(f) letter that says we need information. If we are going
24 to put out a requirement in place that says you now got to go
25 out and monitor your switchyard voltage, or whatever, that's

1 backfit. I've got a process to deal with that.

2 MR. STROSNIDER: I was not our intent to put together
3 a process that is going to allow non-safety- significant issues
4 to then --

5 MR. BISHOP: I'm taking on faith that you go through
6 one and what happens in one determines what comes out of one.

7 MR. VINE: What Gene said was that issues will flow
8 from 1 to 3 whether or not they meet the criteria, because we
9 are going to talk about all of the issues that are of some
10 concern whether or not they meet the backfit criteria or not.
11 The point is that once they get down to 3 and we have that
12 discussion, how does the critical question of is this a
13 compliance issue, is this a cost-benefit safety enhancement, is
14 this adequate protect --

15 MR. SHERON: We'll explain to you why we are
16 concerned about it.

17 MR. VINE: How does that question get answered in
18 getting down to 5? The things that don't meet those shouldn't
19 get to 5.

20 MR. STROSNIDER: And there needs to be some detail to
21 go with this flowchart. There may be the need for a meeting
22 and there may be a need to request some additional information
23 or something to help make that determination.

24 MR. VINE: That's the point. There will be a lot of
25 issues that don't meet the criteria that the industry will

1 still take on an initiative for. The point there is that they
2 shouldn't be enforceable. There are simply us doing what we
3 want to do for the right reason.

4 MR. SHERON: You're on barrel baffle bolting. We're
5 not involved in that.

6 MR. MARION: To go back to your example on the
7 degraded voltage question, one of the possible actions from
8 industry is to say, you know, we looked at this and there are
9 certain things that we think we could do, but you've got to
10 take regulatory action to address this. We may come back and
11 tell you you need to take regulatory action.

12 MR. SHERON: Fine. That's an appropriate
13 recommendation.

14 MR. MARION: So it's not always going to be a case
15 where we don't agree.

16 MR. BISHOP: I think it goes back to where we
17 started, that there needs to be some flexibility in the
18 process, because each of these issues are different.

19 MR. SHERON: We'll just write out a letter saying,
20 Dear Mr. Licensee, NEI recommended we impose this new
21 regulation on you.

22 MR. MARION: Look at the circuit breaker issue.
23 That's what we did on that one. We recommended that you issue
24 a bulletin for the safety-related applications.

25 MR. SHERON: That's fine. That can be an acceptable

1 outcome.

2 MR. MARION: I think that worked out very well.

3 MR. SHERON: Just for Gary's concern, first off, we
4 already said, just like our internal process right now for a
5 generic letter, before the staff can even put pen to paper to
6 start to draft the generic letter, they come to the executive
7 team. They get on our calendar. They brief the executive
8 team. They say, here's what I want to do; here's the generic
9 letter I want to write; here's the information I want to
10 request; here's why I want to request it; here's why I have a
11 problem; here's my safety issue.

12 There has got to be a logic that says reasonable
13 people would say, yeah, there is a potential issue here. It's
14 the same thing. We're saying, first off, with a voluntary
15 industry initiative, nobody is going to write that letter to
16 NEI saying here's another one for you unless it has gone
17 through the management process and everyone agrees there is a
18 potential safety concern.

19 We may not have all the information and the answers.
20 That's the whole objective here. We may not be able to
21 establish the safety significance because we need
22 plant-specific information that we don't have available to us.

23 The idea is to come to the industry and say there is
24 a potential safety concern here. We think you are in a better
25 position to assess it and tell us whether there is a real

1 problem here or not. That's the voluntary industry
2 initiatives: is there a real problem here or not?

3 You come back and you tell us. If we think you've
4 laid out the case and you've got all the data and everything
5 and you say, no, there is not a problem, we're reasonable;
6 we'll accept it.

7 If you come back and say, we didn't really look at
8 much, but we don't think it's a safety problem, we not be too
9 comfortable with that.

10 MR. BISHOP: And occasionally there may be a
11 difference of opinion what whether it fits under the compliance
12 exception or not. Again, that will benefit from dialogue.

13 MR. VINE: Just a couple comments. There are cases
14 going on where industry is being approached by staff saying
15 "we'd like you to put this under a voluntary industry
16 initiative" where it hasn't gone through that process and
17 you're probably not even aware of it.

18 MR. SHERON: Who is doing that?

19 MR. VINE: I don't want to get into specifics.

20 MR. SHERON: No. I've got to know that, because they
21 are not supposed to be doing it. That's my point.

22 MR. VINE: I want to do some further checking.

23 MR. STROSNIDER: To try to put that in perspective,
24 the staff is hearing a lot about voluntary initiatives. It's
25 in the Reg Info Conference. We are having all these meetings.

1 They come in and say, what is it? We say this is what it is.
2 Yeah, that's what I'm supposed to be doing. So they ask the
3 question.

4 You ought to come back to management when you get
5 those kind of requests. Until we get the process laid out and
6 the staff basically trained in it, that could happen.

7 MR. SHERON: The only voluntary industry initiative
8 requests you're going to get should come from a signed out
9 letter from Sam. I don't even want to sign them myself. Right
10 now I want Sam to sign them until he decides he wants to
11 delegate. If you get phone calls, if anybody does, that says,
12 hey, I've got one for you, you tell them no, thank you very
13 much. I appreciate it, but you've got a process there. You go
14 take it to Sheron.

15 MR. STROSNIDER: It's staff trying to implement
16 change.

17 MR. VINE: It's fine when it stays voluntary. We
18 have lots of day-to-day interactions where the staff says, we
19 think you ought consider doing this. As long as it remains
20 part of a guideline document that is voluntary, that input is
21 useful and welcome. It's the case where "we want you to
22 volunteer to do this so we can get in inspection and
23 enforcement space" that it's a problem.

24 MR. MARION: Let's say this is one of our meetings
25 and I'm a regulator, and I say, I've got a generic letter here

1 and if the industry doesn't do something, I'm going to have to
2 issue this. That doesn't help. We've got to get beyond that
3 and get back to the kind of discussion we've had, open, candid,
4 understand the technical issues, scope, magnitude. I submit
5 the great majority of times once you come to that
6 understanding, everything else kind of falls out.

7 There are going to be the more complicated issues
8 that make it a little more challenging.

9 MR. STROSNIDER: I suspect there are more subtle
10 things going on here: Well, yeah, we could find this approach
11 to this issue acceptable if you were commit to this or commit
12 to that. And it's a voluntary initiative.

13 MR. BISHOP: It's the opportunity for management to
14 manage.

15 MR. MARION: It's the barter system.

16 MR. SHERON: In terms of schedule, I don't know to
17 what extent we can accommodate stuff by the 17th. I don't know
18 if you can get comments in any quicker.

19 MR. MARION: We'll try.

20 MR. SHERON: That will be helpful.

21 What date is it due to the Commission?

22 MR. CARPENTER: May 24.

23 MR. SHERON: That means we have got to get it into
24 concurrence in April to get it up there on time.

25 MR. BISHOP: I think you have got a sense of what our

1 approach is going to be, and hopefully that will help you in
2 thinking about it.

3 MR. STROSNIDER: We appreciate today's meeting and
4 discussions. There was clearly some frustration on our part
5 when we talked to Mr. Beedle and in the letter that we sent.
6 Quite frankly, we were trying to come to grips with going back
7 to the transcripts and thinking back on the discussions. We
8 think we are hearing on the one hand don't really need
9 guidelines, don't want guidelines; on the other hand, here's
10 some principles for how to put them together.

11 It just wasn't clear to us what the message was. I
12 think today's discussion helped to focus that somewhat. We
13 will have to study the letter some more, and if we have some
14 questions on that, obviously we will get back to you.

15 MR. MARION: If you need some structure to your
16 internal process, then that is your decision. We don't think
17 guidelines are warranted. Like we said before, the ad hoc
18 process has served us well. If you need for formalize
19 something like this for your own internal controls, that's your
20 call.

21 MR. STROSNIDER: And we may feel we need to do it
22 from other stakeholders' perspectives. But I appreciate that
23 feedback.

24 MR. SHERON: Just like any other guidance document,
25 it could be a reg guide or a standard review plan for voluntary

1 initiative, whatever, I still look at as this is going to lay
2 out for the world our expectations, how we are going to do
3 business, how we plan to do business. To the extent it lays
4 out what the expectations are of the staff as well as what our
5 expectations are of the industry, all our stakeholders can see
6 how we are going to play the game.

7 MR. BISHOP: As you described in your active
8 listening summary, I think that well stated our position. My
9 only concern, Brian, is even internal guidance to the staff
10 ends up being a requirement to the staff, and the staff then
11 says, I can't vary. This is what I've got to do. This is what
12 my boss and my boss' boss said I've got to do. I would use
13 that as an example to highlight that you need to keep it at the
14 principled level rather than you put prescriptive things down
15 there and, by God, there will be no exceptions, and that's the
16 way it's got to be.

17 MR. SHERON: The idea is not to make it prescriptive.
18 It's a guideline.

19 MR. BISHOP: My only point is, however you label it.

20 MR. MARION: Are you going to look for a commitment
21 from your staff?

22 MR. SHERON: I don't have to ask for a commitment. I
23 do their appraisals.

24 MR. BISHOP: You understand my point.

25 MR. SHERON: Yes.

1 MR. BISHOP: It goes back to Gary's point. If you
2 describe it in terms of principles and intent, that's where I
3 think it could be productive.

4 MR. SHERON: There are fundamental steps that we are
5 going to have to outline.

6 MR. BISHOP: I'll take the opportunity to say I think
7 if you start putting arrows in about where this is going to
8 have to wait until there is an interaction with the public or a
9 30-day comment period, this process becomes a problem, and it's
10 not going to be responsive enough to what needs to happen.

11 MR. CARPENTER: We specifically didn't put time lines
12 in this. As you pointed out very rightly throughout the
13 discussion today, each situation is unique, and at some point
14 you may want to exceed the time line of what you did last time.
15 Or you may say, well, this is an issue but it's a long-term
16 issue. We understand that. Believe it or not, we really
17 understand that.

18 MR. BISHOP: I'm terribly encouraged.

19 MR. SHERON: Some issues are going to take two weeks
20 and others are going to take three days.

21 MR. BISHOP: And some might even take longer.

22 MR. CARPENTER: Thank you very much.

23 [Whereupon at 3:10 p.m., the meeting was concluded.]
24
25